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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954.

No. 203

JOHN W. MARTIN, As Trustee of the Property of Florida East Coast Railway Company,
Petitioner,

vs.

JAMES E. JOHNSTON.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA.

ROBERT H. ANDERSON,
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Miami 32, Florida,
Attorney for Petitioner.

June 30, 1955

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954.

No. .....

JOHN W. MARTIN, As Trustee of the Property of Florida East Coast Railway Company,
Petitioner,

vs.

JAMES E. JOHNSTON.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA.

The petitioner, John W. Martin, as Trustee of the Florida East Coast Railway Company, a corporation, prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Florida affirming the judgment for James E. Johnston entered by the Circuit Court for the Eleventh Judicial Circuit of Florida, in and for Dade County.

OPINION BELOW.

The opinion below is reported in 79 Southern 2d 419 (Advance Opinion). A copy of the opinion is set out in Appendix A.

JURISDICTION.

The judgment of the Supreme Court of the State of Florida was entered on April 6, 1955. The jurisdiction of this Court is invoked under 28 U. S. C. § 1257 (3).

QUESTION PRESENTED.

Do the provisions of Section 11 of the Safety Appliance Acts (45 U. S. C. §11) providing that "* * * all cars must be equipped with secure sill steps and efficient hand brakes; all cars requiring secure ladders and secure running boards shall be equipped with such ladders and running boards * * *" apply to a track motor-car used solely for maintenance-of-way purposes and not connected to or used as part of a train?

STATUTE INVOLVED.

The Safety Appliance Acts (45 U. S. C. §§ 1-16) are set out in Appendix B.

STATEMENT.

James Johnston sued the Trustee of the Florida East Coast Railway Company for personal injuries received on February 3, 1953, when he was working as a temporary section foreman for the railroad. He sued under the Federal Employers Liability Act (45 U. S. C. § 51) in the Circuit Court for Dade County, Florida. The Complaint alleged negligence on the part of the defendant in failing to furnish him with a safe place to work and safe equipment with which to work. In the alternative the Complaint alleged a violation of Section 11 of the Safety Appliance Acts (45 U. S. C. § 11), claiming that the track motor-car which

plaintiff was operating was not equipped with an efficient hand brake (R. 2).

At the trial, the trial judge indicated that he did not believe plaintiff had proven any negligence on the part of defendant in failing to furnish safe equipment with which to work but that he would submit to the jury the question of whether or not there was a violation of Section 11 of the Safety Appliance Acts (R. 248). The jury returned a verdict for plaintiff upon which a final judgment was entered. The Supreme Court of Florida affirmed, holding that Section 11 of the Safety Appliance Acts was applicable to the case.

There is little dispute about the facts in the case. Johnston, an employee, was injured when the track motor-car he was operating ran into some dirt and rocks that had been thrown up onto the tracks at a country grade crossing by a county road scraper and derailed.

Johnston was familiar with the motor-car (R. 212). He inspected it daily (R. 212, 303), in addition it had monthly inspections by the regular maintainer (R. 178). The brakes on the motor-car had operated properly on the way out to work on the day of the accident (R. 213) and after he started back (R. 214, 215). Plaintiff's undisputed testimony was that the brakes on the motor-car had never failed in any way until the very moment that the accident occurred (R. 219, 304).

According to Johnston, he applied the brakes then but got only a small percentage of regular braking power and was unable to stop in time to avoid the dirt on the rails (R. 205-206).

The track motor-car involved in the accident was manufactured by Fairmont Motors and is a standard type vehicle used by many railroads (R. 74). It is powered by a gasoline engine and is self-propelling. (R. 50, 54) It

was not considered part of the regular rolling stock of the railroad (R. 76, 185). It was never attached to or used as part of a regular train (R. 76, 185).

On occasions a trailer or push-car is attached to the motor-car and used to carry additional tools. The motor-car has a lever-type handbrake (R. 52); the trailers have no handbrake at all but rather a spring-loaded brake that operates when the trailer pushes into the motor-car (R. 75).

FEDERAL QUESTION RAISED.

The question on which petitioner here seeks review was raised at the conference on charges in the trial court by petitioner's exceptions to the court's charges to the jury on the applicability of the Safety Appliance Acts (R. 331, 332, 335) by exceptions to the court's refusal to grant his requested instructions as to the non-applicability of the Safety Appliance Acts (R. 326, 335) and by motions for directed verdict made at the close of plaintiff's case and at the close of all the evidence (R. 247, 344). The trial court denied petitioner's motions (R. 345), instructed the jury that the provisions of the Safety Appliance Acts were applicable (R. 346-350), and denied petitioner's requested instructions stating that the Safety Appliance Acts did not apply (R. 331, 332, 361).

On appeal to the Supreme Court of Florida from the final judgment, petitioner raised the federal question on which review is here sought by assigning as errors to be reviewed on appeal the rulings of the lower court on its charges to the jury (R. 372-376), the denial of petitioner's requests to charge and motions for directed verdict and for new trial (R. 372). The Supreme Court of Florida affirmed the rulings of the trial court as to the applicability of the Safety Appliance Acts.

ARGUMENT.

We urge this Court to grant a writ of certiorari to review the judgment of the Supreme Court of Florida for these reasons:

1. The Supreme Court of Florida has decided an important federal question involving the interpretation of a federal statute not heretofore determined by this Court. No other decision, state or federal, has ever passed upon the question of whether a track motor-car comes within Section 11 of the Safety Appliance Acts which requires that

> "All cars must be equipped with secure sill steps and efficient hand brakes; all cars requiring secure ladders and secure running boards shall be equipped with such ladders and running boards * * *". (45 U. S. C. § 11)

The very language of Section 11 makes it clear that the "cars" referred to must all have both secure sill steps and efficient hand brakes. The nature of a track motor-car on the one hand and a sill step on the other (See *Hill* v. *Minneapolis, St. P. & S. S. M. Ry. Co.*, (1924) 160 Minn. 484, 200 N. W. 485) makes it abundantly clear that a motor-car from its very nature cannot have a sill step and thus does not come within Section 11. While the motor-car involved in the case had a hand brake, the push-car or trailer which is sometimes attached to it had no hand brake at all but a spring-loaded brake (R. 75).

Supporting the interpretation that Section 11 does not apply to a motor-car is the use of the word "cars" in other sections of the Safety Appliance Acts (45 U. S. C. §§ 1-16). A reading of the various sections individually and together

shows that the "cars" to which the statute refers are passenger cars, freight cars and locomotives.

For example, Section 1 refers to interstate trains having "cars" equipped with air brakes, Section 2 "cars used in moving interstate commerce" having automatic couplers and Section 3 to the right of railroads to refuse to receive from connecting carriers "cars" not equipped with air brakes. The motor-car in this case had no air brakes (R. 75), and no automatic couplers. It was of standard manufacture and a model used by many railroads (R. 74-75). It does not come within these or any sections of the Safety Appliance Acts.

Adding, still further weight to the interpretation that Section 11 of the Safety Appliance Acts does not apply to the instant case is the legislative history leading up to the enactment of 45 U. S. C. § 11 in 1910. The committee reports and congressional debates show clearly that in requiring that cars be equipped with "secure sill steps and efficient hand brakes," Congress was attempting to standardize the various appliances then existing on all passenger and freight cars.[1]

Then, as now, it was intended that passenger cars and freight cars actually used on the line be operated by air brakes, not by hand brakes. *Grand Rapids & I. Ry. Co.* v. *United States,* 249 Fed. 650 (6th Cir. 1918); *Great Northern Ry. Co.* v. *United States,* 244 Fed. 406 (9th Cir. 1917); *New York Central R. Co.* v. *United States,* 265 U. S. 41, 44 (1924). The hand brakes were to be used only in limited yard

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[1]See Senate Reports, Report No. 250 "Safety of Employees and Travelers Upon Railroads," Committee on Interstate Commerce, 61st Congress, Second Session on H. R. 5702; House Reports, Report No. 37, "Safety of Employees and Travelers Upon Railroads", Committee on Interstate and Foreign Commerce, 61st Congress, Second Session, on H. R. 5702; 45 Congressional Record 160-161.

operations when individual cars were being moved and the air brakes were disconnected. *United States* v. *Great Northern Ry. Co.*, 229 Fed. 927 (9th Cir. 1916). It was intended by the statute that all cars from whatever section of the country they might come or by what railroads they were owned would have a hand brake of similar design and similarly located so that railroad employees in yard operations could readily find such appliances. *Illinois Central R. Co.* v. *Williams*, 242 U. S. 462 (1917).

2. By its decision, the Supreme Court of Florida has decided a federal question of substance never before passed on by any court in a manner in conflict with the long-standing interpretation of the administrative body entrusted with enforcement of the Safety Appliance Acts, the Interstate Commerce Commission.

Section 12 of the Safety Appliance Acts (45 U. S. C. §12) delegated to the Interstate Commerce Commission the duty of establishing and designating "the number, dimensions, location and manner of application of the appliances provided for by Section 11 of this title * * *." By its Order of March 13, 1911, as amended by Order of December 11, 1943, and republished on May 16, 1946, the Interstate Commerce Commission established standards for every conceivable kind of passenger car, freight car and locomotive. Nowhere in its Order did the Commission ever refer to or establish any standards or specifications for motor-cars or maintenance-of-way equipment. See, Interstate Commerce Commission, United States Safety-Appliance Standards, Orders of the Commission, 1946.

At the trial, the undisputed testimony of an Interstate Commerce Commission inspector showed that the Commission regularly inspects railroad equipment to see that the requirements of the Safety Appliance Acts are complied with. Yet at no time does the Commission ever in-

spect track motor-cars or maintenance-of-way equipment (R. 257, 259). Interstate Commerce Commission, Report of the Director of the Bureau of Safety to the Interstate Commerce Commission for the Fiscal Year Ended June 30, 1953.

This Court has repeatedly held that the rulings of the Interstate Commerce Commission, the agency entrusted with enforcing the Safety Appliance Acts, are properly persuasive of their meaning. *Davis* v. *Manry*, 266 U. S. 401 (1925); *Atchison, Topeka & Santa Fe R. Co.* v. *Scarlett*, 300 U. S. 471 (1937); *Lilly* v. *Grand Trunk Western R. Co.*, 317 U. S. 481 (1943). See also, *United States* v. *Chicago, St. P., M. & O. R. Co.*, 43 F. 2d 300 (8th Cir. 1930).

It is clear that the Interstate Commerce Commission, in the forty-four years it has been administering the Safety Appliance Acts, has never inspected track motor-cars because it has never considered such equipment to come within the statute.

CONCLUSION.

By its decision, the Supreme Court of Florida has interpreted a federal statute on a question never before passed upon and in a manner in conflict with the plain meaning of the statute, the interpretation of it by the Interstate Commerce Commission and the legislative history leading to its passage.

We respectfully submit that this petition for writ of certiorari should be granted.

ROBERT H. ANDERSON,
627 Ingraham Building,
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Attorney for Petitioner.

July, 1955.

APPENDIX A.

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1955

SPECIAL DIVISION A.

JOHN W. MARTIN, As Trustee of the Property of FLORIDA EAST COAST RAILWAY COMPANY,
Appellant,
vs.
JAMES E. JOHNSTON,
Appellee.

Case No. 25,992.

Opinion Filed April 6, 1955.

An Appeal from the Circuit Court for Dade County, Vincent C. Giblin, Judge.

Anderson, Scott, McCarthy & Preston, Dwight Sullivan and Russell L. Frink, for Appellant.

Nichols, Gaither, Green, Frates & Beckham, William S. Frates, Walter H. Beckham, Jr., and Sam Daniels, for Appellee.

SEBRING, J.:

This is an appeal from a final judgment entered in favor of the plaintiff in a personal injury action for damages arising out of an accident which occurred at a country railroad crossing when the track motor-car of the railroad company which the plaintiff was operating was derailed after running into some dirt and rocks which had been pushed onto the rails by a county road scraper.

The accident was caused by the failure of the hand brakes on the car to respond when the plaintiff attempted to apply them as the car approached the place where the dirt and rocks lay on the tracks; and the cause of action of the plaintiff is predicated not on negligence but on the failure of the railroad company to comply with the provision of the Federal Safety Appliance Act which requires that "all cars must be equipped with . . . efficient hand brakes." 45 U. S. C. A. 11. The sole question on the appeal is whether or not a track motor-car used by railroad maintenance employees, when not attached to a train or used as part of a train movement, comes within the provisions of the Federal Safety Appliance Act.

The sections of the Act bearing on the point are, in substance, as follows:

> *Section 11.* "Safety appliances required for each car . . . It shall be unlawful . . . to haul, or permit to be hauled or used . . . any car subject to the provisions of [sections 11-16] not equipped with appliances provided for in [sections 11-16 of this title], to wit: All cars must be equipped with secure sill steps and efficient hand brakes. . . ." (36 Stat. 298)
>
> *Section 16.* "The provisions of sections 11-16 of this title, as to the equipment of cars with the designated safety appliances apply to every common carrier and every vehicle subject to . . . sections 1-10 of this title."
>
> *Section 8.* "Provisions of certain sections extended . . . the provisions and requirements relating to train brakes, automatic couplers [etc.] shall be held to apply to all trains, locomotives, tenders, cars, and similar vehicles used on any railroad engaged in interstate commerce [with stated exceptions not here applicable]."

We find nothing in the statutes or the reported decisions to indicate an intention that in the enactment of

the above quoted statutes the Congress intended that the word "car" should be used in a narrow, rather than a broad, sense. As was said by the Supreme Court of the United States in *Johnson* v. *Southern Pacific Co.*, 196 U. S. 1, 25 S. Ct. 158, soon after the enactment of the law, "manifestly the word 'car' was used in its generic sense. There is nothing to indicate that any particular kind of car was meant. Tested by context, subject matter and object, 'any car' meant all kinds of cars running on the rails . . . And this view is supported by the dictionary definitions and by many judicial decisions, some of them having been rendered in construction of this act." Accord *Schlemmer* v. *Buffalo, R. & P. R. Co.*, 205 U. S. 1, 27 S. Ct. 407; cf. *Dougall* v. *Spokane, P. & S. Ry. Co.*, 207 F. 2d 843, and *Chicago, I. R. & G. Ry. Co.* v. *Bernnard* (Tex.), 275 S. W. 505, with specific reference to motor cars used in maintenance-of-way work.

While the appellant, in its brief appears to recognize the propriety of a decision holding that a "push-car", a vehicle of the same general class as the motor-car involved in the instant case but not powered with a gasoline engine is a "car" within the provisions of the statute requiring cars to be equipped with automatic couplers; but it attempts to escape the force of the decision by contending that by the language used in its opinion the court indicated that the vehicle was held to come within the provisions of the act *only* because at the time of the accident it was attached to a locomotive engaged in a switching operation and consequently was a part of a train movement. See *Hoffman* v. *New York, N. H. & H. R. Co.*, 74 F. 2d 227.

If the present case were one involving the prohibition of section 2 of the Act against the use of "any car . . . not equipped with couplers coupling automatically," an automatic coupler being a device of no possible utility except when a car is used in connection with other cars

or as a part of a train movement, there might be some force to the contention advanced by the appellant. But what is involved here is a motor-car designed to be operated independently on the railroad tracks under its own power; and it cannot be logically argued that the *use* to which the vehicle was being put at the time of an accident, that is, whether being operated independently or as one of the cars in a train movement, can have any real bearing upon the plain statutory requirement and practical necessity for efficient hand brakes. Neither the Hoffman case, nor any other case to which we have been referred by the parties, will warrant the imposition of such an exception by interpolation, when the language of the statute, and the salutary purpose to be served by its enactment, are so plain.

There being as much reason for requiring the motor-car in question to be equipped with efficient handbrakes, to insure its safe operation when propelled under its own power, as there is for the requirement that such a car be equipped with automatic couplers, where it is to be used in connection with a train movement, we have the view that the Safety Appliance Acts are applicable and that we are not authorized to depart from the literal terms of the statute.

The judgment appealed from is affirmed.

MATHEWS, C. J., TERRELL, J., AND KANNER, Associate Justice, CONCUR.

APPENDIX B.

FEDERAL SAFETY APPLIANCE ACTS

45 United States Code Annotated
Sections 1-16.

Section 1. **Driving-Wheel Brakes and Appliances for Operating Train-Brake System.**

It shall be unlawful for any common carrier engaged in interstate commerce by railroad to use on its line any locomotive engine in moving interstate traffic not equipped with a power driving-wheel brake and appliances for operating the train-brake system, or to run any train in such traffic that has not a sufficient number of cars in it so equipped with power or train brakes that the engineer on the locomotive drawing such train can control its speed without requiring brakemen to use the common hand brake for that purpose.

Section 2. **Automatic Couplers.**

It shall be unlawful for any common carrier engaged in interstate commerce by railroad to haul or permit to be hauled or used on its line any car used in moving interstate traffic not equipped with couplers coupling automatically by impact, and which can be uncoupled without the necessity of men going between the ends of the cars.

Section 3. **Refusal of Insufficiently Equipped Cars from Connecting Lines.**

When any person, firm, company, or corporation engaged in interstate commerce by railroad shall have equipped a sufficient number of its cars so as to comply with the provisions of section 1 of this title, it may lawfully refuse to receive from connecting lines of road or shippers

any cars not equipped sufficiently, in accordance with said section, with such power or train brakes as will work and readily interchange with the brakes in use on its own cars, as required by sections 1-7 of this title.

Section 4. **Grab Irons or Handholds for Security in Coupling and Uncoupling Cars.**

Until otherwise ordered by the Interstate Commerce Commission, it shall be unlawful for any railroad company to use any car in interstate commerce that is not provided with secure grab irons or handholds in the ends and sides of each car for greater security to men in coupling and uncoupling cars.

Section 5. **Standard Height of Drawbars for Freight Cars: Noncomplying Cars Excluded from Traffic.**

No freight cars, either loaded or unloaded, shall be used in interstate traffic which do not comply with the prescribed standard as to height of drawbars.

Section 6. **Failure to Equip Cars As Provided: Duty of United States Attorneys and Interstate Commerce Commission: Exceptions from Operation of Provisions.**

Any common carrier engaged in interstate commerce by railroad using any locomotive engine, running any train, or hauling or permitting to be hauled or used on its line any car in violation of any of the provisions of sections 1-7 of this title, shall be liable to a penalty of $100 for each and every such violation, to be recovered in a suit or suits to be brought by the United States attorney in the district court of the United States having jurisdiction in the locality where such violation shall have been committed; and it shall be the duty of such United States attorney to bring such suits upon duly verified information being lodged with him of such violation having occurred; and it shall

also be the duty of the Interstate Commerce Commission to lodge with the proper United States attorneys information of any such violations as may come to its knowledge: *Provided,* That nothing in sections 1-7 of this title shall apply to trains composed of four wheel cars or to trains composed of eight wheel standard logging cars where the height of such car from top of rail to center of coupling does not exceed twenty-five inches, or to locomotives used in hauling such trains when such cars or locomotives are exclusively used for the transportation of logs.

Section 7. **Assumption of Risk by Employees.**

Any employee of any common carrier engaged in interstate commerce by railroad who may be injured by any locomotive, car, or train in use contrary to the provision of sections 1-7 of this title shall not be deemed thereby to have assumed the risk thereby occasioned, although continuing in the employment of such carrier after the unlawful use of such locomotive, car, or train had been brought to his knowledge.

Section 8. **Provisions of Certain Sections Extended.**

The provisions and requirements of sections 1-7 of this title shall be held to apply to common carriers by railroads in the Territories and the District of Columbia and shall apply in all cases, whether or not the couplers brought together are of the same kind, make, or type; and the provisions and requirements relating to train brakes, automatic couplers, grab irons, and the height of drawbars shall be held to apply to all trains, locomotives, tenders, cars, and similar vehicles used on any railroad engaged in interstate commerce, and in the Territories and the District of Columbia, and to all other locomotives, tenders, cars, and similar vehicles used in connection therewith, excepting those trains, cars, and locomotives exempted by the

provisions of section 6 of this title, or which are used upon street railways.

Section 9. **Number of Cars to Be Operated With Power or Train Brakes: Increase of Number.**

Whenever, as provided in sections 1-7 of this title, any train is operated with power or train brakes not less than 50 per centum of the cars in such train shall have their brakes used and operated by the engineer of the locomotive drawing such train; and all power braked cars in such train which are associated together with said 50 per centum shall have their brakes so used and operated; and, to more fully carry into effect the objects of said sections, the Interstate Commerce Commission may, from time to time, after full hearing, increase the minimum percentage of cars in any train required to be operated with power or train brakes which must have their brakes used and operated as aforesaid; and failure to comply with any such requirement of the said Interstate Commerce Commission shall be subject to the like penalty as failure to comply with any requirement of this section.

Section 10. **Former Duties, Requirements, and Liabilities Continued Unless Specifically Amended.**

Nothing in sections 8 and 9 of this title shall be held or construed to relieve any common carrier, the Interstate Commerce Commission, or any United States attorney from any of the provisions, powers, duties, liabilities or requirements of sections 1-7 of this title, and all of such provisions, powers, duties, requirements, and liabilities shall, except as specifically amended by sections 8 and 9 of this title, apply thereto.

Section 11. **Safety Appliances Required for Each Car: When Hand Brakes May Be Omitted.**

It shall be unlawful for any common carrier subject to the provisions of sections 11-16 of this title, to haul, or permit to be hauled or used on its line, any car subject to the provisions of said sections not equipped with appliances provided for in said sections, to wit: All cars must be equipped with secure sill steps and efficient hand brakes; all cars requiring secure ladders and secure running boards shall be equipped with such ladders and running boards, and all cars having ladders shall also be equipped with secure handholds or grab irons on their roofs at the top of such ladders: *Provided,* That in the loading and hauling of long commodities, requiring more than one car, the hand brakes may be omitted on all save one of the cars while they are thus combined for such purpose.

Section 12. **Safety Appliances, As Designated by Commission, to Be Standards of Equipment; Modification of Standard Height of Drawbars.**

The number, dimensions, location, and manner of application of the appliances provided for by sections 4 and 11 of this title as designated by the Interstate Commerce Commission shall remain as the standards of equipment to be used on all cars subject to the provisions of sections 11-16 of this title, unless changed by an order of said Interstate Commerce Commission, to be made after full hearing and for good cause shown; and failure to comply with any such requirement of the Interstate Commerce Commission shall be subject to a like penalty as failure to comply with any requirement of sections 11-16 of this title.

Said commission is given authority, after hearing, to modify or change, and to prescribe the standard height of drawbars and to fix the time within which such modification or change shall become effective and obligatory, and prior to the time so fixed it shall be unlawful to use any car or vehicle in interstate or foreign traffic which does not comply with the standard now fixed or the standard so prescribed, and after the time so fixed it shall be unlawful to use any car or vehicle in interstate or foreign traffic which does not comply with the standard so prescribed by the commission.

Section 13. **Penalty for Using Car Not Equipped As Provided; Hauling Car for Repairs Where Equipment Becomes Defective; Liability for Death or Injury of Employee; Use of Chains Instead of Drawbars.**

Any common carrier subject to sections 11-16 of this title using, hauling, or permitting to be used or hauled on its line, any car subject to the requirements of said sections not equipped as provided in said sections, shall be liable to a penalty of $100 for each and every such violation, to be recovered as provided in section 6 of this title: *Provided*, That where any car shall have been properly equipped, as provided in sections 1-16 of this title, and such equipment shall have become defective or insecure while such car was being used by such carrier upon its line of railroad, such car may be hauled from the place where such equipment was first discovered to be defective or insecure to the nearest available point where such car can be repaired, without liability for the penalties imposed by this section or section 6 of this title, if such movement is necessary to make such repairs and such repairs cannot be

made except at such repair point; and such movement or hauling of such car shall be at the sole risk of the carrier, and nothing in this section shall be construed to relieve such carrier from liability in any remedial action for the death or injury of any railroad employee caused to such employee by reason of or in connection with the movement or hauling of such car with equipment which is defective or insecure or which is not maintained in accordance with the requirements of sections 1-16 of this title; and nothing in this proviso shall be construed to permit the hauling of defective cars by means of chains instead of drawbars, in revenue trains or in association with other cars that are commercially used, unless such defective cars contain livestock or "perishable" freight.

Section 14. **Liability for Using Car With Defective Equipment, Except As Specified.**

Except that, within the limits specified in section 13 of this title the movement of a car with defective or insecure equipment may be made without incurring the penalty provided by the statutes, but shall in all other respects be unlawful, nothing in sections 11-16 of this title shall be held or construed to relieve any common carrier, the Interstate Commerce Commission, or any United States attorney from any of the provisions, powers, duties, liabilities, or requirements heretofore set out in sections 1-10 of this title; and, except as aforesaid, all of such provisions, powers, duties, requirements, and liabilities shall apply to sections 11-16 of this title.

Section 15. **Enforcement by Commission.**

It shall be the duty of the Interstate Commerce Commission to enforce the provisions of sections 11-16 of this

title as to equipment of each car with safety appliances and all powers heretofore granted to said commission are extended to it for the purpose of such enforcement.

Section 16. **Application of Provisions to Common Carriers and Vehicles Subject to "Safety Appliance Acts."**

The provisions of sections 11-16 of this title, as to the equipment of cars with the designated safety appliances apply to every common carrier and every vehicle subject to what are commonly known as the "Safety Appliance Acts" set out in sections 1-10 of this title.

APPENDIX C.

IN THE SUPREME COURT OF FLORIDA.

JANUARY TERM, A. D. 1955

Wednesday, April 6, A. D. 1955.

John W. Martin, As Trustee of the Property of Florida East Coast Railway Company, Appellant,

vs.

James E. Johnston, Appellee.

This cause having heretofore been submitted to the Court upon the transcript of the record of the judgment herein, and briefs and argument of counsel for the respective parties, and the record having been seen and inspected, and the Court being now advised of its judgment to be given in the premises, it seems to the Court that there is no error in the said judgment; it is, therefore, considered, ordered and adjudged by the Court that the said judgment of the Circuit Court be and the same is hereby affirmed; it is further ordered by the Court that the Appellee do have and recover of and from the Appellant his costs by him in this behalf expended, which costs are taxed in the sum of $....., all of which is ordered to be certified to the Court below.

The Opinion of the Court in this cause prepared by Mr. Justice SEBRING was this day ordered to be filed.

A true copy.

TEST:

/s/ Guyte P. McCord,
Clerk, Supreme Court.

(Seal)

Office - Supreme Court, U. S.
FILED
JUL 25 1955
HAROLD B. WILLEY, Clerk

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1954

No. 203

JOHN W. MARTIN, As Trustee of the property of FLORIDA EAST COAST RAILWAY COMPANY,

Petitioner,

vs.

JAMES E. JOHNSTON,

Respondent.

Petition For a Writ of Certiorari To The Supreme Court of Florida

RESPONDENT'S BRIEF IN OPPOSITION

William C. Gaither
448 Pan American Bank Building
Miami 32, Florida

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1954

No.

JOHN W. MARTIN, As Trustee of the property of FLORIDA EAST COAST RAILWAY COMPANY,

Petitioner,

vs.

JAMES E. JOHNSTON,

Respondent.

Petition For a Writ of Certiorari To The Supreme Court of Florida

RESPONDENT'S BRIEF IN OPPOSITION

OPINION BELOW

The opinion of the Supreme Court of Florida is reported at 79 So. 2d 419, and is copied in full in Appendix A of the Petition.

JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(3).

QUESTION PRESENTED

Do the Federal Safety Appliance Acts (45 U.S.C. Section 1 et seq.) require a railroad to equip motorcars used on its line with efficient hand brakes?

STATUTES INVOLVED

45 U.S.C. Section 11 provides:

> "It shall be unlawful for any common carrier subject to the provisions of section 1-16 of this title to haul, or permit to be hauled or used on its line, any car subject to the provisions of said sections not equipped with appliances provided for in sections 11-16 of this title, to wit: All cars must be equipped with secure sill steps and efficient hand brakes; all cars requiring secure ladders and secure running boards shall be equipped with such ladders and running boards, and all cars having ladders shall also be equipped with secure handholds or grabirons on their roofs at the tops of such ladders: **Provided,** That in the loading and hauling of long commodities, requiring more than one car, the hand brakes may be omitted on all save one of the cars while they are thus combined for such purpose."

45 U.S.C. Section 16 provides:

"The provisions of sections 11, 12, 13, 14 and 15 of this title, as to the equipment of cars with the designated safety appliances apply to every common carrier and every vehicle subject to what are commonly known as the 'Safety Appliance Acts' set out in sections 1-10 of this title."

45 U.S.C. Section 8 provides:

"The provisions and requirements of sections 1-7 of this title shall be held to apply to common carriers by railroads in the Territories and the District of Columbia and shall apply in all cases, whether or not the couplers brought together are of the same kind, make, or type; and the provisions and requirements relating to train brakes, automatic couplers, grab irons, and the height of drawbars shall be held to apply to all trains, locomotives, tenders, cars, and similar vehicles used on any railroad engaged in interstate commerce, and in the Territories and the District of Columbia, and to all other locomotives, tenders, cars, and similar vehicles used in connection therewith, excepting those trains, cars, and locomotives exempted by the provisions of section 6 of this title, or which are used upon street railways."

STATEMENT

On February 3, 1953, respondent was running one of petitioner's motorcars near Fort Pierce, Florida. As the car approached a crossing, he became aware of some dirt and rocks on the track ahead. He immediately made a full

application of the car's hand brake (R. 219-220, 323, 324) at a point 84 feet from the debris (R. 206). The brake gave only a small percentage of normal braking power and, as all five persons on the motorcar testified, it momentarily slowed down and then picked up speed again (R. 92-94, 103-104, 115, 119, 205-206). The car derailed when it hit the debris and plaintiff sustained permanent injuries which included among other things a crushed left foot (R. 16). Had the brake worked properly, the car would have stopped in less than thirty feet (R. 171-176, 206), at a point some fifty feet from the debris (R. 171-172, 206), and the derailment and consequent injuries to plaintiff would not have occurred.

Respondent sued Petitioner under the Federal Employers' Liability Act and under the Safety Appliance Acts (R. 1-2), but the case was submitted to the jury only on the issue of a Safety Appliance Act violation (R. 346-354). The jury found for Respondent and awarded him $61,510.00 damages (R. 354-355).

Final Judgment was entered in accordance with the jury's verdict and was affirmed by the Supreme Court of Florida at 79 So. 2d 419.

REASONS FOR DENYING THE WRIT

Respondent respectfully submits that this Petition should be denied for the following reasons:

1. The question presented has been previously decided adversely to Petitioner and in accordance with the decision below. Hoffman v. New York, N. H. & H. R. Co. (C.A. 2, 1934), 74 F. 2d 227, cert. den., 294 U.S. 715, 55 S.

Ct. 513; Chicago R.I. & G. Ry. v. Bernnard (Tex. Civ. App., 1925), 275 S. W. 505; U.S. v. Fort Worth & Denver City Ry. Co. (Dist. Ct., Tex. 1937), 21 F. Supp. 916.

2. The decision below is correct. In stating the coverage of the Safety Appliance Acts, Congress used universal terms of the broadest possible scope—"all cars" (Section 11), "every vehicle" (Section 16), and "all trains, locomotives, tenders, cars, and similar vehicles" (Section 8). The plain meaning of these all-inclusive terms includes Petitioner's motorcar. As this Court said in Johnson v. Southern P. Co., 196 U. S. 1, 25 S. Ct. 158, 160:

> "And manifestly the word 'car' was used in its generic sense. There is nothing to indicate that any particular kind of car was meant. Tested by context, subject-matter, and object, 'any car' meant all kinds of cars running on the rails, including locomotives. And this view is supported by the dictionary definitions and by many judicial decisions, some of them having been rendered in construction of this act."

3. The decision below is in accord with the probable decisions of this Court. Johnson v. Southern P. Co., 196 U. S. 1, 25 S. Ct. 158; Schlemmer v. Buffalo, R., & P. R. Co., 205 U. S. 1, 27 S. Ct. 407; Spokane & I. E. R. Co. v. U. S., 241 U. S. 344, 36 S. Ct. 668; Spokane & I. E. R. Co. v. Campbell, 241 U. S. 497, 36 S. Ct. 683. Cf., Coray v. Southern Pac. Co., 335 U. S. 520, 69 S. Ct. 275.

4. The decision below is in accord with the liberal construction which has been afforded the Safety Appliance Acts and other remedial legislation. Since the inception

of the Acts, railroads have (as in the present case) frequently argued that for one reason or another a particular safety appliance was not required on a particular type of vehicle. Only twice since 1893 has this argument prevailed. Pennell v. Philadelphia & R. R. Co., 231 U. S. 675, 34 S. Ct. 220; and Davis v. Manry, 266 U. S. 401, 45 S. Ct. 163. The **Pennell** case holds that an automatic coupler is not required between tender and engine when the existing coupler is "in the nature of a permanent coupling." The **Davis** case holds locomotive tenders which have no roofs need not "be equipped with secure handholds or grabirons on their roofs."

5. As petitioner admits, the decision below is not in conflict with any decision of any court.

CONCLUSION

It is respectfully submitted that this petition for a writ of certiorari should be denied.

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